County of San Francisco: **Office of City Attorney**

Louise H. Renne,
City Attorney

January 26, 1988

OPINION NO. 88-1

SUBJECT: Authority of the Public Utilities Commission ("PUC") and Its Staff to Settle Civil Lawsuits and Unlitigated Claims Filed Against the City and County of San Francisco ("City")

REQUESTED BY: DEAN COFFEY, Acting General Manager, PUC
DEBORAH ROHRER, Manager of Contracts and Claims

PREPARED BY: BURK E. DELVENTHAL
JUDITH A. BOYAJIAN
Deputy City Attorneys

QUESTIONS PRESENTED

1. Is the PUC or the City Attorney authorized to negotiate settlements of civil lawsuits against the City arising out of matters under the PUC's jurisdiction?

2. Is the PUC or the City Attorney authorized to negotiate settlements of unlitigated claims against the City arising out of matters under the PUC's jurisdiction?

CONCLUSIONS

1. With respect to civil lawsuits, the City Attorney has the exclusive authority to negotiate settlements. However, settlements of litigation arising out of matters or property under the PUC's jurisdiction must be approved by the PUC.

2. With respect to unlitigated claims, the PUC and its staff negotiate settlements. However, all settlements must be approved in writing by the City Attorney.

ANALYSIS

CIVIL LAWSUITS

The settlement of litigation which involves matters or property under the PUC's jurisdiction is governed by Sections 3.401, 3.594 and 7.703 of the San Francisco Charter and Sections

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10.22-2 and 10.24(c) of the San Francisco Administrative Code. Pursuant to those provisions, the City Attorney has the exclusive authority to settle litigation against or in favor of the City. However, a settlement relating to matters or property under the PUC's jurisdiction must be approved by resolution of the PUC.

The City Attorney's authority over litigation is set forth in Charter Section 3.401. It provides in relevant part:

* * *

> The city attorney must represent the city and county in all actions and proceedings in which it may be legally interested, or, for or against the city and county, or, any officer of the city and county in any action or proceeding, when directed so to do by the supervisors, except where a cause of action exists in favor of the city and county against said officer. Whenever any cause of action exists in favor of the city and county, the city attorney shall commence the same when within his knowledge or when directed so to do by the supervisors. He shall give his advice or opinion in writing to any officer, board or commission of the city and county when requested. Except as otherwise provided in this charter, he shall not settle or dismiss any litigation for or against the city and county, unless, upon his written recommendation, he is ordered so to do by ordinance. . . .

This portion of Charter Section 3.401 contains two propositions relevant to this inquiry. First, the City Attorney is the City's Charter-mandated representative in all actions or proceedings for or against the City. Second, subject to exceptions set forth in other provisions of the Charter, the City Attorney may not settle or dismiss any litigation unless, upon her written recommendation, she is ordered to do so by ordinance.

One of the "other" provisions of the Charter is Section 3.594, which provides in relevant part:

> The city attorney, as the legal advisor of the [public utilities] commission, may, with the approval of the commission, compromise, settle or dismiss any litigation or proceedings which may be pending for or on behalf of or against said commission relative to any matter or property under its jurisdiction. . . .

Charter Section 3.594 vests in the PUC the authority to approve the City Attorney's settlement of civil lawsuits relating to matters or property under the PUC's jurisdiction. However, the City Attorney's authority, under Charter Section 3.401, supra, to represent the City in and negotiate settlements of all actions remains unchanged. Accordingly, the City Attorney is empowered to "compromise, settle or dismiss" litigation arising out of matters or property under the PUC's jurisdiction. The PUC has only the power of approval.

This interpretation squares with the basic concept of our Charter. Under the Charter, the only entity that enjoys the reserve power is the Board of Supervisors, which is empowered to exercise all City powers not reserved to the people or delegated to other officials, boards and commissions by the Charter. (Charter § 2.101; West Coast Advertising Co. v. San Francisco (1939) 14 Cal.2d 516.) City officers, boards, and commissions may exercise only those municipal powers expressly delegated to them. (See Charter § 1.101; Douglass v. City of Los Angeles (1935) 5 Cal.2d 123, 129.) Since, under the Charter provisions discussed above, the City Attorney is given the exclusive authority to negotiate settlements of litigation, the PUC and its staff may not do so. (Ibid.) Accordingly, the PUC is only empowered to approve or disapprove settlements negotiated by the City Attorney with respect to litigation involving matters or property within the PUC's jurisdiction. (Charter §§ 3.401 and 3.594.)

Our conclusion is also consistent with the ordinances enacted by the Board of Supervisors that govern settlement of litigation against the City. Charter Section 7.703 empowers the Board to "prescribe the method whereby claims or litigation, or proceedings, based thereon, may be settled, compromised, adjusted or dismissed." Pursuant to this Charter authority, the Board of Supervisors enacted Sections 10.20 et seq. of the San Francisco Administrative Code. Section 10.22-2 provides in pertinent part:

> The City Attorney is authorized and directed to compromise and settle, by payment not exceeding $5,000, any litigation against the City and County with respect to which the City Attorney and the head of the department which has jurisdiction over the matter or property giving rise to the litigation recommend such settlement in writing, . . . subject to approval by resolution of the board or commission having jurisdiction over such department in other cases. . . . (Emphasis added.)

Identical language with respect to litigated claims in favor of the City is set forth in San Francisco Administrative Code Section 10.24(c).

This duty and authority of the City Attorney is one of the checks and balances built into the Charter. As an elected official, the City Attorney owes directly to the people her duty of allegiance to represent the City. (See San Francisco Charter of 1931 by Francis Keesling, pp. 40-41; City Attorney Ops. Nos. 84-7 at pp. 7-9, 86-13, and 86-10.) Even when the City Attorney represents City officers and employees acting in the course and scope of their employment, the only entity with legal standing as a party in the action is the City itself. (Ward v. Superior Court (1977) 70 Cal. App.3d 23, 32.) By vesting in the City Attorney the authority to control all litigation and making that official elected and hence accountable to the people, the drafters chose to protect the City Attorney and the public interest from conflicting loyalties that could attend an attorney serving at the pleasure of and controlled by the City's constituent boards, commissions, officials, and employees. (Keesling, supra.)

The City Attorney's authority to represent the City in legal actions, which authority includes approval over the settlement or compromise of litigation, is a nondelegable, Charter-mandated duty of the office. Accordingly, once an action is brought against the City, the City Attorney has exclusive control over the litigation and over the negotiation of any settlement.

However, the City Attorney's settlement approval authority is not exclusive. Charter Section 3.401, supra, provides: "Except as otherwise provided in this charter, [the City Attorney] shall not settle or dismiss any litigation for or against the City, unless, upon his written recommendation, he is ordered to do so by ordinance." For matters under the PUC's jurisdiction, the City Attorney must receive settlement authority from the PUC. (Charter § 3.594, supra.) Analogous Charter provisions require settlement approval of the Airports Commission and the Port Commission. These provisions act as a check upon the City Attorney's authority to represent the City in litigation and to negotiate settlements.

We therefore advise that once litigation has been filed against the City, the City Attorney has exclusive control over that litigation. Authority over the litigation includes the power to negotiate and recommend a settlement. If the litigation involves matters or property under the PUC's jurisdiction, the PUC is empowered to approve or disapprove any settlement recommended by the City Attorney. However, the PUC has no authority to to

negotiate and recommend a settlement. If the litigation involves matters or property under the PUC's jurisdiction, the PUC is empowered to approve or disapprove any settlement recommended by the City Attorney. However, the PUC has no authority to negotiate settlements of litigation. A contrary conclusion would result in a non-elected body such as the PUC exercising broader authority over its settlements than the elected members of the Board of Suprvisors exercises over settlements within the Board's jurisdiction.

UNLITIGATED CLAIMS

Settlement of claims is governed by Sections 900 et seq. of the California Government Code, as well as by provisions of the San Francisco Charter and the San Francisco Administrative Code.

Government Code Section 935.2 provides:

> A charter provision, or a local public entity by ordinance or resolution, may establish a claims board or commission of not less than three members to perform such functions of the governing body of the public entity under this part as are prescribed by the local public entity. A charter provision, ordinance, or resolution may provide that, upon the written order of the claims board or commission, the auditor or other fiscal officer of the local public entity shall cause a warrant to be issued upon the treasury of the local public entity in the amount for which a claim has been allowed, compromised or settled.

Section 935.4 contains substantially identical language with respect to settlement of claims by an employee of the local public entity, except that settlement authority is limited to $20,000 absent charter authorization.

Charter Sections 7.703, 3.598 and 3.401 address unlitigated claims. Section 7.703 provides that all claims for money damages against the City must be filed in accordance with the general laws of the State of California. It further provides that, "[e]xcept as otherwise provided for in other sections of the charter, the board of supervisors, by ordinance, shall prescribe the method whereby claims or litigation, or proceedings, based thereon, may be settled, compromised, adjusted or dismissed."

Acting pursuant to the above-cited Government Code provisions and Charter Section 7.703, the Board of Supervisors adopted Article II, Sections 10.20 et seq. of the San Francisco Administrative Code regarding settlement of claims. Those sections generally provide that unlitigated claims may be settled on the written recommendation of the applicable department, board or commission, with the written approval of the City Attorney. Settlement of claims in excess of $5,000 require the additional approval of the Board of Supervisors.

Section 10.20-6 specifically addresses the disposition of claims by the PUC, the Port Commission and the Airports Commission. That section provides:

> Pursuant to Sections 935.2 and 935.4 of Government Code, State of California, and Sections 3.581, 3.585, 3.594, 3.598, 3.690, 3.691 and 3.694 of the Charter of the City and County of San Francisco, the Port Commission, Public Utilities Commission and Airports Commission are hereby authorized to perform all functions of the Board of Supervisors under Part III of Division 3.6 of Title I of Government Code, State of California, relative to claims arising out of or in connection with any matter or property under their respective jurisdictions; provided, however, that applications for leave to present late claims pursuant to Section 10.20-7 of the San Francisco Administrative Code and Section 911.6 of Government Code, State of California, may be acted upon by the respective commission, the chief executive officer thereof or a duly designated employee thereof.
>
> In carrying out these functions, the respective commissions above designated may authorize, within prescribed limits, designated officers or employees to extend by agreement with the claimant the time within which the claim may be considered for allowance or compromise and settlement. (Emphasis added.)

Since the Board of Supervisors has empowered the PUC, Airports Commission, and Port Commission to perform all functions of the Board relative to unlitigated claims under those commissions' respective jurisdictions, we must first identify the Board's functions with respect to claims.

The California Government Code requires the Board of Supervisors (as the City's governing body) or its designee to consider all claims presented and take action to reject, allow, compromise or settle a claim within the time prescribed by state law. (Gov. Code §§ 910 et seq.) Local public entities are authorized to establish claims procedures. (Gov. Code §§ 935 et seq.)

Under the City's general claims procedure, disposition of claims is governed by Charter Section 3.401, supra, and Administrative Code Section 10.20-5. Charter Section 3.401 provides in pertinent part:

> (c) There is established in the office of the city attorney a bureau of claims investigation and administration which shall have the responsibility of investigation, evaluating and processing for the several boards, commissions and departments all claims for money or damages made upon the city and county pursuant to Section 7.703 of this charter or the general law of the State of California. Claim investigation functions of the police department in existence on June 4, 1986, shall continue as an adjunct to the bureau established under this section. Claims functions of the public utilities commission shall remain under that commission unless transferred to the bureau of claims investigation and administration by ordinance of the board of supervisors. . . .

Administrative Code Section 10.20-5 provides that the Controller shall forward all claims other than those subject to Administrative Code Section 10.20-6, supra -- i.e., relating to matters or property under the jurisdiction of the PUC, the Airports Commission, or the Port Commission -- to the City Attorney, who must review them for compliance with Government Code requirements. The City Attorney is expressly authorized to reject any and all claims forwarded by the Controller. The final paragraph of Section 10.20-5 provides:

> Further action by the City Attorney in connection with a claim shall be governed by the provisions of Sections 10.21 and 10.22 of the San Francisco Administrative Code. The City Attorney is authorized to extend, by agreement with the claimant, the time within which the City Attorney may consider a claim for purposes of payment or compromise under Sections 10.21 and 10.22. (Emphasis added.)

Sections 10.21 and 10.22 address generally the approval of claims. Section 10.21 covers claims under $5,000 and Section 10.22 covers claims exceeding $5,000. Basically, both of these sections provide that any unlitigated claim against the City may be allowed, settled, or compromised on the written recommendation of the head of the department (or of the board or commission in charge of the department) against which the claim is made ". . . with the written approval of the City Attorney." The only difference between the two sections is that settlement of claims in excess of $5,000 requires the approval of the Board of Supervisors.

As discussed above, the PUC, Airports Commission and Port Commission perform the functions of the Board of Supervisors over claims. Under the City's claims procedure, the Board of Supervisors' authority over claims is to approve the settlement of claims in excess of $5,000. Therefore, by its express language, Section 10.20-6, supra, only empowers the PUC, Airports Commission and Port Commission to exercise the Board's power of approval over settlement of claims in excess of $5,000. Section 10.20-6 manifests no legislative intent to remove the City Attorney's authority to approve settlements of all claims, whether or not they relate to matters or property under the jurisdiction of those commissions. Further, the City Attorney's settlement approval authority over claims must necessarily be implied from the City Attorney's express authority and control over litigation provided in Charter Section 3.401, in that the determination whether to settle or deny a claim determines which claims will be litigated.

Moreover, a conclusion that by enacting Section 10.20-6 the Board of Supervisors did intend to remove the City Attorney's authority to approve settlements of PUC claims would lead to an absurd result. In all settlements of claims approved by the Board of Supervisors, the Administrative Code requires approval by the City Attorney. (Admin. Code § 10.22.) Hence, the Board of Supervisors has chosen to require the City Attorney's written approval of the settlement of a claim before the Board itself may authorize it. It would be unreasonable to conclude that the Board intended to give greater powers to the PUC, Airports Commission, and Port Commission than it has reserved to itself in connection with the settlement of claims.

Further, as mentioned above, the Charter expressly authorizes the City Attorney to investigate, evaluate and process claims for money or damages on behalf of the several boards, commissions and departments. (Charter §3.401(c).) The

Administrative Code requires the City Attorney's approval of the settlement of all unlitigated claims. Although Charter Section 3.401(c) provides that claims function of the PUC remain under that Commission unless transferred to the City Attorney's claims bureau, nothing in that Charter section manifests my intent to alter the City Attorney's authority to approve the settlement of claims. We therefore conclude that like all other departments, boards and commissions, the PUC must obtain the City Attorney's prior written approval of a negotiated settlement of an unlitigated claim. However, since Administrative Code Section 10.20-6 expressly authorizes the PUC to exercise the powers of the Board of Supervisors, the Board's approval of settlements over $5,000 is not required.

Our conclusion is not altered by the provisions of Administrative Code Section 10.25, which provides:

> The provisions of Section 10.21 to 10.24 of this code shall not apply to claims presented against, by or in favor of any municipally-owned utility under the jurisdiction of the Public Utilities Commission, or claims referred to the Bureau of Delinquent Revenue Collection, pursuant to the provisions of Sections 10.37 to 10.42 of this code. (Emphasis added.)

That section merely provides that PUC claims governed by Sections 10.37 to 10.42 are settled pursuant to the provisions of those sections, rather than pursuant to Sections 10.21 and 10.22.

San Francisco Administrative Code Sections 10.37 to 10.42 concern the collection of delinquent revenues. Under those sections, the Bureau of Delinquent Revenue Collection is responsible for collecting and (with the consent of the Controller and the applicable department or office) may compromise and settle all delinquent accounts, except for those involving municipally-owned utilities under the jurisdiction of the PUC or Airports Commission, the Department of Social Services, the Port, and the Tax Collector. (Admin. Code §§ 10.38 and 10.40.) Section 10.41 governs the collection of delinquent municipally-owned utility accounts.

Section 10.41 provides:

> The collection of delinquent revenues and delinquent accounts due to any municipally-owned utility under the jurisdiction of the Public Utilities Commission shall be made in accordance with the provisions of Section 3.598 of the Charter. Accounts due to any such utility and which are delinquent for more than 90 days shall be reported by the head of the utility or by the Manager of Utilities to the Controller. If the head of the utility or the Manager of Utilities is of the opinion that the accounts cannot be collected, they may, with the approval of the Controller, be cancelled. In the event of such cancellation, the utility or the Public Utilities Commission shall no longer be responsible for their collection. (Emphasis added.)

Charter Section 3.598 provides in pertinent part:

> The public utilities commission shall have power to fix, change and adjust rates, charges or fares for the furnishing of service by any utility under its jurisdiction, and to collect by appropriate means all amounts due for said service, and to discontinue to delinquent customers and to settle and adjust claims arising out of the operation of any said utilities. . . . (Emphasis added.)

Since Sections 10.37 to 10.42 govern both delinquent accounts under the PUC's jurisdiction and those that are the responsibility of the Bureau of Delinquent Revenue Collection, the reference in Section 10.25, supra, to Sections 10.37 to 10.42 must apply to both types of claims. (Wholesale T. Dealers v. National Etc. Co. (1938) 11 Cal.2d 634, 659.) The fact that there is a comma after the clause "or claims referred to the Bureau of Delinquent Revenue Collection" further indicates that the reference to Sections 10.37 to 10.42 was intended to apply to both types of claims. (Ibid; Board of Trustee v. Judge (1975) 50 Cal.App.3d 920, 928, fn. 4 and cases cited therein.) Accordingly, delinquent utility accounts under the PUC's jurisdiction are settled pursuant to Administrative Code Section 10.41 and Charter Section 3.598; all other claims involving matters or property under the PUC's jurisdiction are settled

pursuant to Sections 10.21 and 10.22. Those sections require the City Attorney's approval for the settlement of claims.[1/]

Nor is our conclusion altered by the provision of Charter Section 3.401, supra, stating that the "[c]laims functions of the public utilities commission shall remain under that commission unless transferred to the bureau of claims investigation and administration by ordinance of the board of supervisors." Charter Section 3.401, supra, plainly empowers the City Attorney to investigate, evaluate and process all claims for money or damages for the various departments, boards and commissions. The only exceptions are "claim investigation functions" of the police department and "claims functions" of the PUC. As discussed above, PUC claims functions relate only to the negotiation of settlements of unlitigated claims (Admin. Code §10.20 et seq.) and the collection, settlement and adjustment of delinquent accounts. (Charter §3.598 and Admin. Code § 10.41.) In either case, the written approval of the City Attorney is required in order to settle and compromise such claims.

We therefore advise that with respect to unlitigated claims under $5,000 that arise out of or in connection with any matter or property under the jurisdiction of the PUC, settlements may be

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[1/] We note that that both Charter Section 3.598, supra, and Administrative Code Section 10.41, supra, are silent with respect to the City Attorney's involvement in the settlement of delinquent municipally-owned revenue accounts. Accordingly, the provisions of Charter Section 3.401, supra, must apply. That section provides that "[w]henever any cause of action exists in favor of the city and county, the city attorney shall commence the same when within his knowledge or when directed to do so by the supervisors." Since every claim is a potential cause of action, approval of the City Attorney must be received before either the PUC, the Port or the Airports Commission may settle or compromise delinquent revenue claims. (Charter § 3.401.)

We note further that the cancellation of a delinquent revenue claim pursuant to Section 10.41, supra, requires a determination that the account is "uncollectible." Since an account's uncollectibility requires a legal analysis, the approval of the City Attorney is necessarily implied under the Charter provisions giving the City Attorney the authority to represent the City's legal interests. (Ibid.)

negotiated by the PUC staff and approved by the head of the department, by the General Manager of the PUC or by the PUC itself, with the written approval of the City Attorney. With respect to claims in excess of $5,000, settlements must be approved by the PUC and the City Attorney. Settlement, compromise, or cancellation of claims relating to delinquent municipally-owned utility accounts also require the City Attorney's written approval.[2]

Very truly yours,

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[2] Our conclusion that the City Attorney must approve all settlements of claims negotiated by the PUC has been recognized by the PUC in its Resolution No. 77-0184, which provides in part that:

> "Upon the written recommendation of the respective manager of departments or bureaus under the jurisdiction of this Commission, <u>with the approval of the City Attorney</u> and the General Manager of Public Utilities or the Secretary, any claim for or on behalf of or against any department or bureau under the jurisdiction of this Commission which arises against or in favor of any person, firm or corporation which exceeds in amount the sum of $3,000.00 [amended by Resolution No. 86-0253 to $15,000.00] may be settled and compromised." (Emphasis added.)

APPROVED:

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